

also with regard to those which are entirely and properly public wharves. As to all such as belong to individuals, or a body politic, which are affected with a public interest, the wharfage must be reasonable; and, after having been once legally adjusted, cannot be enhanced to an immoderate amount. Such wharves are subject to some statutory regulations in England; *Hale de Portibus*, 77; 1744, ch. 22, s. 2 and 15; 1817, ch. 225, s. 7; 1822, ch. 57, s. 7; and here they are particularly alluded to in several of our Acts of Congress regulating the collection of revenue from goods imported, as places dedicated to the use of that commerce which the Federal Government alone has a right to regulate; and, consequently, no wharfage can be demanded for the use of any such wharf in a public port, either to an amount, or in a manner, so as in any way to give a preference prohibited by the Federal Constitution, or to interfere with the regulation of commerce, or the collection of such revenue by the Federal Government.

This I take to be the true intention of the provisions of the Federal Constitution in relation to the regulation of commerce, and the laying of duties on imports as declared by various Acts of Congress, and admitted by our own legislative enactments. 1791, ch. 60. And therefore, upon these principles I hold the Act of Assembly which authorizes The Mayor and City Council of Baltimore to charge and collect such wharfage as they make think reasonable, from all vessels lying at or landing articles, other than the productions of this State, on any wharf belonging to The Mayor and City Council, or any public wharf of the city, to be unconstitutional and void. 1827, ch. 162, s. 4; *Gibbons v. Ogden*, 9 Wheat. 196; *Brown v. The State of Maryland*, 12 Wheat. 442.

Where an individual is the owner of any such wharf to which
375 *all persons may lawfully come for the purpose of lading or unlading their goods, he may be allowed by law to demand and receive certain specified and reasonable tolls for its use; because of his having expressly undertaken to be at all the charge of maintaining and repairing it. But in all cases, where the entire right of soil has been vested in the public, or where the wharf itself, or the place on which it has been built by public authority, has been condemned, or dedicated in any way to the use of the public, there no toll of any kind can be demanded; for, a toll is in the nature of a tax upon the people; and no tax of any description can be levied without the express sanction of the General Assembly. *Warrington v. Mosely*, 4 Mod. 320; *Brett v. Beales*, 22 Com. Law Rep. 349; 1744, ch. 22, s. 15; 1753, ch. 28; 1803, ch. 64, s. 4 and 11; 1813, ch. 48; 1816, ch. 257; 1818, ch. 164; 1819, ch. 108; 1820, ch. 72; 1821, ch. 64 and 200. Such a wharf may, however, be so regulated as to be made most generally and equally beneficial to all. 1817, ch. 71, s. 7. And where a wharf, like a road, or a street, has been once laid open and made free to all, no